IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8665 of 1996
With
SPECIAL CIVIL APPLICATION No. 1233 of 1997
With
SPECIAL CIVIL APPLICATION No. 1235 of 1997
With
SPECIAL CIVIL APPLICATION No. 8597 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALUBHAI A DUDHAT - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
Mr. Dipen Desai, Asst. GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 17/01/2007

ORAL JUDGMENT

As common questions of law and facts arise in all these four petitions and a common

order dated 23.10.1996 has been challenged in all these petitions, they are being disposed of by this common judgment and order.

2. So far as Special Civil Applications No. 8665 of 1996, 1233 of 1997 and 1235 of 1997 are concerned, it is the case on behalf of respective petitioners that the impugned order dated 23.10.1996 reverting them to the post of Junior Clerk is based on wrong fixation of seniority list in the cadre of Clerk and even Senior Clerks. It is the case on behalf of the petitioners that while preparing the final Seniority List in the cadre of Clerk dated 8.7.1993 their seniority ought to have been considered right from 2.11.1979 and/or from the day on which the petitioners came to be appointed and/or joined the services under the Centralised Recruitment Scheme. It is submitted that therefore the seniority list in the cadre of Senior Clerk dated 8.7.1993 was defective. It is

submitted that initially a provisional seniority list was published in the cadre of Clerk dated 8.7.1993 and the petitioners were not satisfied with the same and though objections were raised the final seniority list came to be published on 8.7.1993. It is further submitted that when subsequently the final seniority list was published in the cadre of Senior Clerk, the same mistake has been committed and the seniority list has not been prepared in accordance with law and therefore the impugned order reverting the petitioners to the post of Junior Clerk on the basis of defective select list requires to be quashed and set aside. Shri Devnani, learned advocate appearing on behalf of the respective petitioners in Special Civil Applications No. 8665 of 1996, 1233 of 1997 and 1235 of 1997, has vehemently submitted that the impugned order reverting the petitioners to the post of Junior Clerk has been passed on the basis of the defective seniority list in the cadre of Clerk

dated 8.7.1993 and also the final defective seniority list in the cadre of Senior Clerk dated 9.4.1996 ignoring their past services after they were recruited under the Centralised Recruitment Scheme and till they joined the present department and therefore same require to be quashed and set aside. It is submitted that their placement in the seniority list in the cadre of Clerks as well as Senior Clerks was not in accordance with law and therefore it is requested to allow the said Special Civil Applications.

3. Shri NA Pandya, learned advocate appearing on behalf of the petitioner in Special Civil Application No. 8597 of 1996 has vehemently submitted that over and above the above submissions made by Shri Devnani in the aforesaid Special Civil Applications, so far as the petitioners of Special Civil Application No. 8597 of 1996 are concerned, earlier they have

preferred Special Civil Application No. 11294 of 1993, and learned Single Judge of this Court allowed the said Special Civil Application No. 11294 of 1993 whereby the order of reversion dated 20th October 1993 passed on the basis of final seniority list dated 8.7.1993 was set aside and therefore it is not open for the respondents now again to revert the petitioner to the post of Junior Clerk. Therefore it is requested to allow the present Special Civil Application.

4. While opposing the present Special Civil Applications, Shri Dipen Desai, learned AGP has submitted that the main grievance of the respective petitioners in the present group of petitions is that their placements in the seniority list of Clerks dated 8.7.1993 and in the list of Senior Clerks dated 9.4.1996 were defective and the same were not in accordance with law and therefore so far as the contention on behalf of the petitioners that impugned

orders should be quashed and set aside is concerned, the respective petitioners have never challenged the final seniority list in the cadre of Clerks dated 8.7.1993. It is submitted that the subsequent seniority list in the cadre of Senior Clerks dated 9.4.1996 was on the basis of final seniority list in the cadre of Clerks dated 8.7.1993 and that even the final seniority list in the cadre of Senior Clerk is also not challenged by the petitioners. It is submitted that the impugned order dated 23rd October 1996 is the consequential order of implementation of final seniority list dated 8.7.1993 in the cadre of Clerk which has become final and the same has never been challenged by the petitioners.

5. So far as the contention on behalf of the petitioner of Special Civil Application No. 8597 of 1996 relying upon the judgment of the learned Single Judge in Special Civil Application No. 11294 of 1993 is concerned, Shri Desai has

submitted that the very petitioner had requested at the relevant time to implement the final seniority list dated 8.7.1993 when his juniors were continued on the basis of the seniority list and therefore it was submitted that there was no question of reverting the petitioner, and now when the question of implementation of final seniority dated 8.7.1993 has arisen and consequently when the petitioner is reverted along with persons junior to the petitioner, the said action is neither illegal nor arbitrary and therefore requested to dismiss the said Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is required to be noted that the final seniority list in the cadre of Clerk came to be published on 8.7.1993. The said final seniority list has never been challenged by the petitioners. Thereafter on the basis of the said final seniority list dated

8.7.1993 in the cadre of Clerk, further final seniority list in the cadre of Senior Clerk came to be published on 9.4.1996. The said seniority list has also not been challenged by any of the petitioners. The impugned order dated 23.10.1996 is a consequential order on implementation of final seniority list in the cadre of Clerk dated 8.7.1993. The said final seniority list dated 8.7.1993 in the cadre of Clerk had become final as the same had not been challenged and the impugned order of reversion is the consequence of finalization of the seniority list in the cadre of Clerk dated 8.7.1993 and while implementing the said seniority list if the petitioners are required to be reverted to their original post, it cannot be said that there is any illegality committed by any of the respondents.

7. It is the contention on behalf of the petitioners that their placement in the seniority list dated 8.7.1993 in the cadre of Clerks and in

the cadre of Senior Clerks in the seniority list dated 9.4.1996 is erroneous. However, as stated above, the petitioners have never challenged the final seniority list dated 8.7.1993 in the cadre of Clerks and the final seniority list dated 9.4.1996 in the cadre of Senior Clerks, and there is no prayer made to set aside the said seniority list. Therefore, both the above seniority lists having become final, the impugned order dated 23rd October 1996 is only a consequential order on implementation of final seniority list in the cadre of Clerk dated 8.7.1993. Hence, it cannot be said that there is any illegality committed by the respondents. Under the circumstances, all these petitions are required to be dismissed.

8. So far as the contention on behalf of the petitioner of Special Civil Application No. 8597 of 1996 relying upon Judgment of the learned Single Judge of this Court in Special Civil Application No. 11294 of 1993 dated 17th December

1993 is concerned, it is required to be noted that in the said petition, the petitioner had contended that even on finalisation of the seniority list dated 8.7.1993 in the cadre of Clerks some persons juniors to the petitioners were continued as Senior Clerks and therefore he was not required to be reverted, and, accepting such contention, the learned Single Judge of this Court allowed the said Special Civil Application and quashed and set aside the order dated 20th October 1993 by which the petitioner was reverted to the junior cadre. It is further required to be noted that those persons junior to the petitioner are now petitioners of Special Civil Applications No. 8665 of 1996, 1233 of 1997 and 1235 of 1997, and subsequently while implementing the final seniority list dated 8.7.1993 even those persons also came to be reverted to the cadre of Clerk and therefore petitioner is rightly reverted to the cadre of Junior Clerk. It is required to be noted that it

is the very petitioner who had accepted the final seniority list dated 8.7.1993 in the cadre of Clerk, however his contention was that his juniors were continued in the cadre of Senior Clerk. Under the circumstances, it is not open for the petitioners to challenge the final seniority list dated 8.7.1993 in the cadre of Clerk. It is required to be observed that the learned Single Judge of this Court had initially granted interim relief in Special Civil Applications No. 8665 of 1996, 1233 of 1997 and 1235 of 1997, however as subsequently the interim relief came to be vacated, all the petitioners of those Special Civil Applications came to be reverted. It is reported that, thereafter, on implementation of final seniority list dated 8.7.1993 in the cadre of Clerk and after reversion the petitioners again came to be promoted to the post of Senior Clerk and at present those petitioners are working in the cadre of Senior Clerks. So far as petitioner of

Special Civil Application No. 8597 of 1996 is concerned, it appears that he was protected during the pendency of present Special Civil Application and he has continued to serve as Senior Clerk. However, on dismissal of the present Special Civil Application, his seniority in the cadre of Junior Clerk requires to be considered as per the final seniority list dated 8.7.1993 over and above further seniority and promotions if any.

9. For the reasons stated above, all the petitions fail and they are accordingly dismissed. Rule is discharged in all the petitions. However, there shall be no order as to costs.

[M.R. Shah, J.]

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